Assembly Bill No. 2104

Passed the Assembly August 25, 2004

_____

Chief Clerk of the Assembly

Passed the Senate August 24, 2004

_____

Secretary of the Senate

This bill was received by the Governor this _____ day of

_____, 2004, at _____ o'clock __M.

_____

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1021.8 of the Code of Civil Procedure, to amend Sections 14030 and 14070 of the Corporations Code, to amend Section 12715 of, and to add Sections 12016 and 63048.63 to, the Government Code, to amend Section 44011 of, and to amend, repeal, and add Section 44091.1 of, the Health and Safety Code, to amend Section 5045 of the Public Resources Code, to repeal Section 1587 of the Unemployment Insurance Code, to amend Section 4000.1 of the Vehicle Code, and to amend Section 12878 of the Water Code, relating to state operations, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2104, Committee on Budget. State operations.

(1) Under existing law, whenever the Attorney General prevails in a civil action to enforce specified types of claims, the court is required to award the Attorney General all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.

This bill would correct erroneous cross-references contained in that provision.

(2) Existing law establishes the California Small Business Expansion Fund in the State Treasury to, among other things, pay for defaulted loan guarantees, administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee. Existing law requires that the amount of guarantee liability outstanding at any one time not exceed 4 times the amount of funds on deposit in the expansion fund and requires that a corporate guarantee be backed by funds on deposit in the corporation's corporate fund.

This bill would require that the amount on deposit in the expansion fund for guarantee liability include any receivables due from funds loaned from the expansion fund to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature. The bill would also provide that a corporate guarantee may also be backed by receivables due from funds from the corporation's trust fund account to another

fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature.

(3) Existing law sets forth the powers and duties of the Governor, including the appointment of various executive officers.

This bill would require the Governor to appoint an executive officer to be the Director of Homeland Security to serve at the pleasure of the Governor, and to appoint a deputy director of homeland security to serve at the pleasure of the director.

(4) Existing law establishes the method of calculating the distribution of appropriations from the Indian Gaming Special Distribution Fund for grants to local government agencies impacted by tribal gaming. Under existing law, the Controller, acting in consultation with the California Gambling Control Commission, is responsible for dividing county tribal casino accounts into individual tribal casino accounts, from which funds may be allocated for grants to local jurisdictions impacted by tribal gaming. Existing law specifies that funds not allocated from an individual tribal casino account by the end of each fiscal year revert back to the Indian Gaming Special Distribution Fund.

This bill would instead specify that funds not allocated from a county tribal casino account, if not allocated by the end of each fiscal year, revert back to the Indian Gaming Special Distribution Fund.

(5) The California Public Records Act establishes the right of every person to inspect and obtain copies of public records not exempt from disclosure from specified state and local agencies.

This bill would exempt from disclosure under that act the records of an Indian tribe received by the state, or by an agency, trust fund, or entity specified by the state, in connection with the sale of any portions of the designated tribal-state compact assets or the issuance of bonds, or other related documents, as specified. The bill would make related changes, and would include a statement of legislative intent.

(6) Existing law establishes a motor vehicle inspection and maintenance program (smog check), administered by the Department of Consumer Affairs and the State Air Resources Board, that provides for the inspection of all motor vehicles, except those specifically exempted from the program, upon registration, biennially upon renewal of registration, upon transfer

of ownership, and in certain other circumstances. Existing law requires the Department of Motor Vehicles to require any motor vehicle subject to those requirements to demonstrate compliance with those requirements. Existing law also establishes an enhanced motor vehicle inspection and maintenance program (smog check II) in each urbanized area of the state, any part of which is classified by the United States Environmental Protection Agency as a serious, severe, or extreme nonattainment area for specified air contaminants. Existing law also requires the smog tests to include, at a minimum, loaded mode dynamometer testing in enhanced areas, and 2-speed testing in all other program areas, and a visual or functional check of emission control devices specified by the department. Existing law exempts from those requirements, any motor vehicle 4 or less model-years old and also exempts any motor vehicle up to 6 model-years old, unless the state board determines that the exemption would prohibit the state from meeting the requirements of the federal Clean Air Act.

This bill would, commencing January 1, 2005, expand that exemption to include any motor vehicle 6 or fewer model-years old, unless the state board makes those same determinations regrading the requirements of the federal act.

(7) Existing law subjects any motor vehicle exempted from the smog check requirements that is 4 or less model-years old to a smog abatement fee of $12 and authorizes the department to impose that fee on motor vehicles that are 5 or 6 model-years old, if the department expands the exemption from the smog check requirements to include those motor vehicles.

Existing law allocates the revenue generated by $6 of that fee to be deposited in the Air Pollution Control Fund. Existing law requires the revenue generated by $2 of that fee to be deposited in the High Polluter Repair or Removal Account in the Vehicle Inspection and Repair Fund, and requires the remainder of the revenues generated by the fee to be deposited in the Vehicle Inspection and Repair Fund.

Existing law establishes the Carl Moyer Memorial Air Quality Standards Attainment Program, which provides grants to offset the incremental cost of projects that reduce oxides of nitrogen from heavy-duty sources in the state, including off road and agricultural sources.

This bill would instead repeal those smog abatement fee provisions on January 1, 2005. The bill, until January 1, 2005, would reduce the smog abatement fee to $6, and would require the revenues from $2 of the fee to be deposited in the High Polluter Repair or Removal Account, with the remainder to be deposited in the Vehicle Inspection and Repair Fund. The bill would, commencing January 1, 2005, instead impose a smog abatement fee of $12. The bill would require the revenues from $6 of the fee to be deposited in the Air Pollution Control Fund, and would make those moneys available, upon appropriation, to fund the Carl Moyer Air Quality Standards Attainment Program, to the extent the state board or a participating district determines the moneys are expended to mitigate or remediate the harm caused by the type of motor vehicle on which the fee is imposed. The bill would require, of the revenue generated by the remaining $6 of the fee, the revenue from $2 to be deposited in the High Polluter Repair or Removal Account, and the revenue from $4 to be deposited in the Vehicle Inspection and Repair Fund.

(8) Existing law makes any violation of the smog check program a misdemeanor.

This bill would impose a state-mandated local program by changing the definition of a crime.

(9) Existing law establishes the Mono Lake Tufa State Reserve as a unit of the state park system. Existing law provides that the reserve consists of the state-owned portions of the Mono Lake bed lying at or below the elevation of 6,417 feet above sea level. Existing law requires the Department of Parks and Recreation to manage the reserve, as specified.

This bill would specify that the reserve, and the department's management of the reserve, includes all resources within the reserve's boundaries, including the waters of Mono Lake, except that the department's management authority would not extend to certain matters.

(10) Existing law establishes the Employment Development Department Contingent Fund, which is continuously appropriated without regard to fiscal year for refunds of amounts collected and erroneously deposited, for interest payable under the state unemployment and disability compensation program, and for administration of the Employment Development Department in the Health and Welfare Agency. Existing law prohibits any

expenditure for administration from the fund, except under an authorization made by the Director of Finance, as specified.

This bill would repeal that prohibition.

(11) Existing law exempts a transfer of ownership of a motor vehicle from the smog check requirements in certain circumstances, including transfers within the initial 90-day validity period of a smog certificate, between certain family members, or in certain business circumstances, and if the motor vehicle is 30 or more model-years old.

This bill would, commencing January 1, 2005, also exempt any transfer of ownership of a motor vehicle that is 4 or less model-years old. The bill would require the department to impose a fee of $8 on the transferee of the vehicle and would require the revenues generated by that fee be deposited in the Vehicle Inspection and Repair Fund. The bill would also delete obsolete provisions in existing law.

(12) Existing law authorizes, on a project-by-project basis, and in accordance with designated plans, state participation in federal flood control projects and specifies the degree of cooperation to be assumed by the state and local agencies in connection with those projects. Existing law establishes procedures for the assumption of flood control maintenance and operation duties by the Department of Water Resources in connection with the formation of a maintenance area on behalf of a federal flood control project unit. Existing law prescribes requirements relating to the imposition of assessments on behalf of a maintenance area. Existing law requires the funds generated by the imposition of the assessments to be deposited in the Water Resources Revolving Fund and continuously appropriates those funds to pay the operation and maintenance costs of maintenance areas.

The bill would change requirements relating to the imposition of assessments by, among other things, revising the definition of the term ''operation and maintenance costs'' to include additional costs. By including additional costs paid in maintenance areas from the continuous appropriation of funds from the Water Resources Revolving Fund, the bill would make an appropriation.

(13) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(14) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 1021.8 of the Code of Civil Procedure is amended to read:

1021.8. (a) Whenever the Attorney General prevails in a civil action to enforce Section 17537.3, 22445, 22446.5, 22958, 22962, or 22963 of the Business and Professions Code, Section 52, 52.1, 55.1, or 3494 of the Civil Code, the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code or the California Commodity Law of 1990 (Division 4.5 (commencing with Section 29500) of Title 4 of the Corporations Code), Section 1615, 2014, or 5650.1 of the Fish and Game Code, Section 4458, 12606, 12607, 12598, 12989.3, 16147, 66640, 66641, or 66641.7 of the Government Code, Section 13009, 13009.1, 19958.5, 25299, 39674, 41513, 42402, 42402.1, 42402.2, 42402.3, 42402.4, 43016, 43017, 43154, 104557, or 118950 of the Health and Safety Code, Section 308.1 or 308.3 of the Penal Code, Section 2774.1, 4601.1, 4603, 4605, 30820, 30821.6, 30822, 42847, or 48023 of the Public Resources Code, Section 30101.7 of the Revenue and Taxation Code, or Section 275, 1052, 1845, 13261, 13262, 13264, 13265, 13268, 13304, 13331, 13350, or 13385 of the Water Code, the court shall award to the Attorney General all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs. Awards under this section shall be paid to the Public Rights Law Enforcement Special Fund established by Section 12530 of the Government Code.

(b) This section applies to any action pending on the effective date of this section and to any actions filed thereafter.

(c) The amendments made to this section by the act adding this subdivision shall apply to any action pending on the effective date of these amendments and to any actions filed thereafter.

SEC. 2. Section 14030 of the Corporations Code is amended to read:

14030. There is hereby created in the State Treasury the California Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to a lending institution or financial company that will act as trustee of the funds. The expansion fund and the trust fund shall be used to pay for defaulted loan guarantees issued pursuant to Article 9 (commencing with Section 14070), administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee. The amount of guarantee liability outstanding at any one time shall not exceed four times the amount of funds on deposit in the expansion fund plus any receivables due from funds loaned from the expansion fund to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature, including each of the trust fund accounts within the trust fund, unless the director has permitted a higher leverage ratio for an individual corporation pursuant to subdivision (b) of Section 14037.

SEC. 3. Section 14070 of the Corporations Code is amended to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's trust fund account, or by receivables due from funds loaned from the corporation's trust fund account to another fund in state government as directed by the Department of Finance pursuant to a statute enacted by the Legislature.

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the director, unless the director authorizes a higher leverage ratio for an individual corporation pursuant to subdivision (b) of Section 14037.

(c) The expansion fund and trust fund accounts shall be used exclusively to guarantee obligations and pay the administrative costs of the corporations. A corporation located in a rural area may utilize the funds for direct lending to farmers as long as at least 90 percent of the corporate fund farm loans, calculated by dollar amount, and all expansion fund farm loans are guaranteed by the United States Department of Agriculture. The amount of funds available for direct farm lending shall be determined by the director. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as

to raise additional funds for direct lending. The agency shall issue regulations governing these direct loans, including the maximum amount of these loans.

(d) In furtherance of the purposes of this part, up to one-half of the trust funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the director may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan authorized by the director to the corporation shall be on terms similar to the loan between the corporation and the borrower. The amount of the loan may be in excess of the amount of a loan to any individual farm borrower, but actual disbursements pursuant to the agency loan agreement shall be required to be supported by a loan agreement between the farm borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the agency and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the agency. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower, which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the agency is limited to the repayment received by the corporation from the borrower except in a case where the United States Department of Agriculture requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the agency if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the agency from the corporation shall be deposited into the same account from which the funds were originally borrowed.

(f) Upon the approval of the director, a corporation shall be authorized to borrow trust funds from the agency for the purpose

of relending those funds to small businesses. A corporation shall demonstrate to the director that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. Not more than 25 percent of any trust fund account shall be used for the direct lending established pursuant to this subdivision. A loan to a corporation shall not exceed the amount of funds likely to be lent to small businesses within three months following the loan to the corporation. The maximum loan amount to a small business is fifty thousand dollars ($50,000). In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan to the corporation shall be limited to the amount of funds received by the corporation for the loan to the small business and any other funds received from the agency that are not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount determined by the director pursuant to regulation. The program provided for in this subdivision shall be available in all geographic areas of the state.

SEC. 4. Section 12016 is added to the Government Code, to read:

12016. (a) The Governor shall appoint, to serve at his or her pleasure, an executive officer who shall be Director of Homeland Security. The Director of Homeland Security shall be in charge of homeland security and shall be the state coordinator of all homeland security activities, including, but not limited to, homeland security strategy, information analysis related to terrorism, and protection of critical infrastructure from terrorism.

(b) The Governor shall also appoint one deputy director of homeland security who shall serve at the pleasure of the director. The salaries of the director and deputy director shall be fixed in accordance with law.

SEC. 5. Section 12715 of the Government Code is amended to read:

12715. (a) The Controller, acting in consultation with the California Gambling Control Commission, shall divide the County Tribal Casino Account for each county that has gaming devices that are subject to an obligation to make contributions to the Indian Gaming Special Distribution Fund into a separate account for each tribe that operates a casino within the county. These accounts shall be known as Individual Tribal Casino

Accounts, and funds may be released from these accounts to make grants selected by an Indian Gaming Local Community Benefit Committee pursuant to the method established by this section to local jurisdictions impacted by tribal casinos. Each Individual Tribal Casino Account shall be funded in proportion to the amount that each individual tribe paid in the prior fiscal year to the Indian Gaming Special Distribution Fund.

(b) (1) There is hereby created in each county in which Indian gaming is conducted an Indian Gaming Local Community Benefit Committee. The selection of all grants from each Individual Tribal Casino Account or County Tribal Casino Account shall be made by each county's Indian Gaming Local Community Benefit Committee. In selecting grants, the Indian Gaming Local Community Benefit Committee shall follow the priorities established in subdivision (g). This committee has the following additional responsibilities:

(A) Establishing all application policies and procedures for grants from the Individual Tribal Casino Account or County Tribal Casino Account.

(B) Assessing the eligibility of applications for grants from local jurisdictions impacted by tribal gaming operations.

(C) Determining the appropriate amount for reimbursement from the aggregate county tribal account of the demonstrated costs incurred by the county for administering the grant programs. The reimbursement for county administrative costs may not exceed 2 percent of the aggregate county tribal account in any given fiscal year.

(2) The Indian Gaming Local Community Benefit Committee shall be composed of seven representatives, consisting of the following:

(A) Two representatives from the county, selected by the county board of supervisors.

(B) Three elected representatives from cities located within four miles of a tribal casino in the county, selected by the county board of supervisors. In the event that there are no cities located within four miles of a tribal casino in the county, other local representatives may be selected upon mutual agreement by the county board of supervisors and a majority of the tribes paying into the Indian Gaming Special Distribution Fund in the county. When there are no cities within four miles of a tribal casino in the county,

and when the Indian Gaming Local Community Benefit Committee acts on behalf of a county where no tribes pay into the Indian Gaming Special Distribution Fund, other local representatives may be selected upon mutual agreement by the county board of supervisors and a majority of the tribes operating casinos in the county.

(C) Two representatives selected upon the recommendation of a majority of the tribes paying into the Indian Gaming Special Distribution Fund in each county. When an Indian Gaming Local Community Benefit Committee acts on behalf of a county where no tribes pay into the Indian Gaming Special Distribution Fund, the two representatives may be selected upon the recommendation of the tribes operating casinos in the county.

(c) Sixty percent of each individual tribal casino account shall be available for nexus grants on a yearly basis to cities and counties impacted by tribes that are paying into the Indian Gaming Special Distribution Fund, according to the four-part nexus test described in paragraph (1). Grant awards shall be selected by each county's Indian Gaming Local Community Benefit Committee and shall be administered by the county. Grants may be awarded on a multiyear basis, and these multiyear grants shall be accounted for in the grant process for each year.

(1) A nexus test based on the geographical proximity of a local government jurisdiction to an individual Indian land upon which a tribal casino is located shall be used by each county's Indian Gaming Local Community Benefit Committee to determine relative priority for grants, using the following criteria:

(A) Whether the local government jurisdiction borders the Indian lands on all sides.

(B) Whether the local government jurisdiction partially borders Indian lands.

(C) Whether the local government jurisdiction maintains a highway, road, or other thoroughfare that is the predominant access route to a casino that is located within four miles.

(D) Whether all or a portion of the local government jurisdiction is located within four miles of a casino.

(2) Fifty percent of the amount specified in subdivision (c) shall be awarded in equal proportions to local government jurisdictions that meet all four of the nexus test criteria in paragraph (1). If no eligible local government jurisdiction satisfies

this requirement, the amount specified in this paragraph shall be made available for nexus grants in equal proportions to local government jurisdictions meeting the requirements of paragraph (3) or (4).

(3) Thirty percent of the amount specified in subdivision (c) shall be awarded in equal proportions to local government jurisdictions that meet three of the nexus test criteria in paragraph (1). If no eligible local government jurisdiction satisfies this requirement, the amount specified in this paragraph shall be made available for nexus grants in equal proportions to local government jurisdictions meeting the requirements of paragraph (2) or (4).

(4) Twenty percent of the amount specified in subdivision (c) shall be awarded in equal proportions to local government jurisdictions that meet two of the nexus test criteria in paragraph (1). If no eligible local government jurisdiction satisfies this requirement, the amount specified in this paragraph shall be made available for nexus grants in equal proportions to local government jurisdictions meeting the requirements of paragraph (2) or (3).

(d) Twenty percent of each individual tribal casino account shall be available for discretionary grants to local jurisdictions impacted by tribes that are paying into the Indian Gaming Special Distribution Fund. These discretionary grants shall be made available to all local jurisdictions in the county irrespective of any nexus to impacts from any particular tribal casino, as described in paragraph (1) of subdivision (c). Grant awards shall be selected by each county's Indian Gaming Local Community Benefit Committee and shall be administered by the county. Grants may be awarded on a multiyear basis, and these multiyear grants shall be accounted for in the grant process for each year.

(e) (1) Twenty percent of each individual tribal casino account shall be available for discretionary grants to local jurisdictions impacted by tribes that are not paying into the Indian Gaming Special Distribution Fund. These grants shall be made available to local jurisdictions in the county irrespective of any nexus to impacts from any particular tribal casino, as described in paragraph (1) of subdivision (c), and irrespective of whether the impacts presented are from a tribal casino that is not paying into the Indian Gaming Special Distribution Fund. Grant awards shall

be selected by each county's Indian Gaming Local Community Benefit Committee and shall be administered by the county. Grants may be awarded on a multiyear basis, and of these multiyear grants shall be accounted for in the grant process for each year.

(A) Grants awarded pursuant to this subdivision are limited to addressing service-oriented impacts and providing assistance with one-time large capital projects related to Indian gaming impacts.

(B) Grants shall be subject to the sole sponsorship of the tribe that pays into the Indian Gaming Special Distribution Fund and the recommendations of the Indian Gaming Local Community Benefit Committee for that county.

(2) If an eligible county does not have a tribal casino operated by a tribe that does not pay into the Indian Gaming Special Distribution Fund, the money available for discretionary grants under this subdivision shall be available for distribution pursuant to subdivision (d).

(f) (1) For each county that does not have gaming devices subject to an obligation to make payments to the Indian Gaming Special Distribution Fund, funds may be released from the county's County Tribal Casino Account to make grants selected by the county's Indian Gaming Local Community Benefit Committee pursuant to the method established by this section to local jurisdictions impacted by tribal casinos. These grants shall be made available to local jurisdictions in the county irrespective of any nexus to any particular tribal casino. These grants shall follow the priorities specified in subdivision (g).

(2) Funds not allocated from a county tribal casino account by the end of each fiscal year shall revert back to the Indian Gaming Special Distribution Fund. Moneys allocated for the 2003–04 fiscal year shall be eligible for expenditure through December 31, 2004.

(g) The following uses shall be the priorities for the receipt of grant money from Individual Tribal Casino Accounts: law enforcement, fire services, emergency medical services, environmental impacts, water supplies, waste disposal, behavioral, health, planning and adjacent land uses, public health, roads, recreation and youth programs, and child care programs.

(h) All grants from Individual Tribal Casino Accounts shall be made only upon the affirmative sponsorship of the tribe paying

into the Indian Gaming Special Distribution Fund from whose individual tribal casino account the grant moneys are available for distribution. Tribal sponsorship shall confirm that the grant application has a reasonable relationship to a casino impact and satisfies at least one of the priorities listed in subdivision (g). A grant may not be made for any purpose that would support or fund, directly or indirectly, any effort related to opposition or challenge to Indian gaming in the state, and, to the extent any awarded grant is utilized for any prohibited purpose by any local government, upon notice given to the county by any tribe from whose Individual Tribal Casino Account the awarded grant went toward that prohibited use, the grant shall terminate immediately and any moneys not yet used shall again be made available for qualified nexus grants.

(i) A local government jurisdiction that is a recipient of a grant from an Individual County Tribal Casino Account or a County Tribal Casino Account shall provide notice to the public, either through a slogan, signage, or other mechanism, which states that the local government project has received funding from the Indian Gaming Special Distribution Fund and which further identifies the particular Individual Tribal Casino Account from which the grant derives.

(j) (1) Each county's Indian Gaming Local Benefit Committee shall submit to the Controller a list of approved projects for funding from Individual Tribal Casino Accounts. Upon receipt of this list, the Controller shall release the funds directly to the local government entities for which a grant has been approved by the committee.

(2) Funds not allocated from an individual tribal casino account by the end of each fiscal year shall revert back to the Indian Gaming Special Distribution Fund. Moneys allocated for the 2003–04 fiscal year shall be eligible for expenditure through December 31, 2004.

SEC. 6. Section 63048.63 is added to the Government Code, to read:

63048.63. (a) The Legislature hereby finds and declares:

(1) The financial and legal records of California Indian tribes and tribal business enterprises are records of a sovereign nation and are not subject to disclosure by private citizens or the state. This is explicitly recognized in amendments to tribal-state gaming

compacts ratified by the Legislature, which provide for the securitization of annual payments to be received from the tribes by the state or by an agency, trust, fund, or entity specified by the state.

(2) In order to review the records of any Indian tribe relative to this securitization, the compacts require the execution of nondisclosure agreements.

(3) State entities statutorily charged with participating in the bond sale cannot perform those duties in the absence of that agreement, and the Legislature hereby acknowledges and agrees that documents containing tribal information are not public records, shall not be discussed in an open meeting, and that state officials privy to that information may execute nondisclosure agreements.

(b) Nothing in Chapter 3.5 of Division 7 of Title 1 (commencing with Section 6250) or any other provision of law shall permit the disclosure of any records of an Indian tribe received by the state, or by an agency, trust fund, or entity specified by the state, in connection with the sale of any portions of the designated tribal-state gaming compact assets or the issuance of bonds, or any summaries or analyses thereof. The transmission of the records, or the information contained in those records in an alternative form, to the state or the special purpose trust shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the state or special purpose trust shall be subject to this same exemption from disclosure.

(c) The state and the special purpose trust are authorized to enter into nondisclosure agreements with Indian tribes agreeing not to disclose the materials described in subdivision (b).

(d) The nondisclosure agreements may include provisions limiting the representatives of the state and the special purpose trust authorized to review or receive records of the Indian tribe to those individuals directly working on the sale of portions of the designated compact assets or the issuance of the bonds.

(e) Nothing in Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code shall be construed to prevent the bank from conducting a closed session to consider any records or information of an Indian tribe or any summaries or analyses thereof received by the state in connection with the sale of any portion of the compact assets or the issuance of bonds.

SEC. 7. Section 44011 of the Health and Safety Code is amended to read:

44011. (a) All motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage shall be required biennially to obtain a certificate of compliance or noncompliance, except for all of the following:

(1) Every motorcycle, and every diesel-powered vehicle, until the department, pursuant to Section 44012, implements test procedures applicable to motorcycles or to diesel-powered vehicles, or both.

(2) Any motor vehicle that has been issued a certificate of compliance or noncompliance or a repair cost waiver upon a change of ownership or initial registration in this state during the preceding six months.

(3) (A) Prior to January 1, 2003, any motor vehicle manufactured prior to the 1974 model-year.

(B) Beginning January 1, 2003, any motor vehicle that is 30 or more model-years old.

(4) (A) Except as provided in subparagraph (B), any motor vehicle four or less model-years old.

(B) Beginning January 1, 2005, any motor vehicle six or less model-years old, unless the state board finds that providing an exception for these vehicles will prohibit the state from meeting the requirements of Section 176(c) of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or the state's commitments with respect to the state implementation plan required by the Clean Air Act.

(C) Any motor vehicle excepted by this paragraph shall be subject to testing and to certification requirements as determined by the department, if any of the following apply:

(i) The department determines through remote sensing activities or other means that there is a substantial probability that the vehicle has a tampered emission control system or would fail for other cause a smog check test as specified in Section 44012.

(ii) The vehicle was previously registered outside this state and is undergoing initial registration in this state.

(iii) The vehicle is being registered as a specially constructed vehicle.

(iv) The vehicle has been selected for testing pursuant to Section 44014.7 or any other provision of this chapter authorizing out-of-cycle testing.

(5) In addition to the vehicles exempted pursuant to paragraph (4), any motor vehicle or class of motor vehicles exempted pursuant to subdivision (b) of Section 44024.5. It is the intent of the Legislature that the department, pursuant to the authority granted by this paragraph, exempt at least 15 percent of the lowest emitting motor vehicles from the biennial smog check inspection.

(6) Any motor vehicle that the department determines would present prohibitive inspection or repair problems.

(7) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(b) Vehicles designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

SEC. 8. Section 44091.1 of the Health and Safety Code is amended to read:

44091.1. (a) The fee specified in paragraph (1) of subdivision (d) of Section 44060 shall be six dollars ($6). The revenues from that fee shall be allocated as follows:

(1) Except as provided for in paragraph (2), of the revenue generated by two dollars ($2) of the fee shall be deposited in the account created by Section 44091, while the revenue generated by the remaining four dollars ($4) shall be deposited in the Vehicle Inspection and Repair Fund.

(2) All revenue generated by the fee described in this subdivision that is imposed at first registration of a motor vehicle and that is exempted under paragraph (4) of subdivision (a) of Section 44011 shall be deposited in the account created by Section 44091.

(b) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 9. Section 44091.1 is added to the Health and Safety Code, to read:

44091.1. Commencing January 1, 2005, the fee specified in paragraph (1) of subdivision (d) of Section 44060 shall be twelve

dollars ($12). The revenues from that fee shall be allocated as follows:

(a) The revenues generated by six dollars ($6) of the fee shall be deposited in the Air Pollution Control Fund, and shall be available for expenditure, upon appropriation by the Legislature, to fund the Carl Moyer Memorial Air Quality Standards Attainment Program (Chapter 9 (commencing with Section 44275)) to the extent that the state board or a participating district determines the moneys are expended to mitigate or remediate the harm caused by the type of motor vehicle on which the fee is imposed.

(b) (1) Except as provided for in paragraph (2), of the revenue generated by the remaining six dollars ($6) of the fee, two dollars ($2) shall be deposited in the account created by Section 44091, while the revenue generated by the remaining four dollars ($4) shall be deposited in the Vehicle Inspection and Repair Fund.

(2) All revenue generated by the remaining six dollars ($6) of the fee described in this subdivision that is imposed at first registration of a motor vehicle that is exempted under paragraph (4) of subdivision (a) of Section 44011 shall be deposited in the account created by Section 44091.

(c) This section shall become operative on January 1, 2005.

SEC. 10. Section 5045 of the Public Resources Code is amended to read:

5045. (a) The tufa and associated sand structures at Mono Lake are a valuable geologic and scientific natural resource and are unique in North America for their beauty, abundance, diversity, and public accessibility. Their extreme fragility requires special measures for their protection and preservation for the enjoyment and education of the public.

(b) The Mono Lake Tufa State Reserve is hereby established as a unit of the state park system and shall consist of the state-owned portions of the Mono Lake bed lying at or below the elevation of 6,417 feet above sea level. As soon as practicable after January 1, 1982, the State Lands Commission shall issue a permit for occupancy to the department pursuant to Section 6221.

(c) (1) The reserve shall include, and the department shall manage, all resources within the reserve’s boundaries, including, but not limited to, the waters of Mono Lake.

(2) Notwithstanding the provisions of paragraph (1), nothing in this subdivision grants the department authority over any of the following:

(A) The instream flow requirements of the tributaries to Mono Lake.

(B) The water surface elevation of Mono Lake.

(C) The water production, diversion, storage, and conveyance activities of the City of Los Angeles.

(D) The determination of water quality standards for Mono Lake.

(d) As soon as practicable after January 1, 1982, the State Lands Commission shall issue a permit for occupancy to the department pursuant to Section 6221.

SEC. 11. Section 1587 of the Unemployment Insurance Code is repealed.

SEC. 12. Section 4000.1 of the Vehicle Code is amended to read:

4000.1. (a) Except as otherwise provided in subdivision (b), (c), or (d) of this section, or subdivision (b) of Section 43654 of the Health and Safety Code, the department shall require upon initial registration, and upon transfer of ownership and registration, of any motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, and upon registration of a motor vehicle previously registered outside this state which is subject to those provisions of the Health and Safety Code, a valid certificate of compliance or a certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(b) With respect to new vehicles certified pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code, the department shall accept a statement completed pursuant to subdivision (b) of Section 24007 in lieu of the certificate of compliance.

(c) For purposes of determining the validity of a certificate of compliance or noncompliance submitted in compliance with the requirements of this section, the definitions of new and used motor vehicle contained in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code shall control.

(d) Subdivision (a) does not apply to a transfer of ownership and registration under any of the following circumstances:

(1) The initial application for transfer is submitted within the 90-day validity period of a smog certificate as specified in Section 44015 of the Health and Safety Code.

(2) The transferor is the parent, grandparent, sibling, child, grandchild, or spouse of the transferee.

(3) A vehicle registered to a sole proprietorship is transferred to the proprietor as owner.

(4) The transfer is between companies whose principal business is leasing vehicles, if there is no change in the lessee or operator of the vehicle or between the lessor and the person who has been, for at least one year, the lessee's operator of the vehicle.

(5) The transfer is between the lessor and lessee of the vehicle, if there is no change in the lessee or operator of the vehicle.

(6) The motor vehicle is 30 or more model-years old.

(7) Beginning January 1, 2005, the transfer is for a motor vehicle that is four or less model-years old. The department shall impose a fee of eight dollars ($8) on the transferee of a motor vehicle that is four or less model-years old. Revenues generated from the imposition of that fee shall be deposited into the Vehicle Inspection and Repair Fund.

(e) The State Air Resources Board, under Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, may exempt designated classifications of motor vehicles from subdivision (a) as it deems necessary, and shall notify the department of that action.

(f) Subdivision (a) does not apply to a motor vehicle when an additional individual is added as a registered owner of the vehicle.

SEC. 13. Section 12878 of the Water Code is amended to read:

12878. Unless the context otherwise requires, the following definitions apply throughout this chapter:

(a) ''Department'' means Department of Water Resources.

(b) ''Director'' means the Director of Water Resources.

(c) ''Board'' means the State Reclamation Board.

(d) Wherever the words ''board or department'' or ''board or director'' are used together in this chapter they shall mean board as to any project in the Sacramento or San Joaquin Valleys or on or near the Sacramento River or the San Joaquin River or any of

their tributaries, and department or director as to any project in any other part of the state outside of the jurisdiction of the board.

(e) ''Project'' means any project that has been authorized pursuant to Chapter 2 (commencing with Section 12639) or Chapter 4 (commencing with Section 12850) and concerning which assurances have been given to the Secretary of the Army or the Secretary of Agriculture that the state or a political subdivision thereof will operate and maintain the project works in accordance with regulations prescribed by the federal government or any project upon which assurances have been given to the Secretary of the Army and upon which the Corps of Engineers, United States Army, has performed work pursuant to Section 208 of Public Law 780, 83rd Congress, 2nd Session, approved September 3, 1954.

(f) ''Maintenance'' means work described as maintenance by the federal regulations issued by the Secretary of the Army or the Secretary of Agriculture for any project.

(g) ''Maintenance area'' means described or delineated lands that are found by the board or department to be benefited by the maintenance and operation of a particular unit of a project.

(h) ''Unit'' means any portion of the works of a project designated as a unit by the board or department, other than the works prescribed in Section 8361, or works operated and maintained by the United States.

(i) ''Land'' includes improvements.

(j) ''Local agency'' means and includes all districts or other public agencies responsible for the operation of works of any project under Section 8370, Chapter 2 (commencing with Section 12639) or Chapter 4 (commencing with Section 12850) or any other law of this state.

(k) ''Cost of operation and maintenance'' means, for the purposes of maintenance areas established after July 31, 2004, as the result of relinquishment by a local agency pursuant to Section 12878.1 only, the cost of all maintenance, as defined in subdivision (f), and shall also include, but is not limited to, all of the following costs:

(1) All costs incurred by the department or the board in the formation of the maintenance area under this chapter.

(2) Any costs, if deemed appropriate by the department, to secure insurance covering liability to others for damages arising

from the maintenance activities of the department or from flooding in the maintenance area.

(3) Any costs of defending any action brought against the state, the department, or the board, or any employees of these entities, for damages arising from the maintenance activities of the department or from flooding in the maintenance area.

(4) Any costs incurred in the payment of any judgment or settlement of an action against the state, the department, or the board, or any employees of these entities, for damages arising from the formation of the maintenance area or from any maintenance activities of the department or flooding in the maintenance area.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for the health and safety of residents in the state as soon as possible, it is necessary that this act take effect immediately.

Approved _____, 2004

_____

Governor